IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3595 OF 2005

Nagesh Namdeo Walvante. ... Applicant.
Versus.
The State of Maharashtra. ... Respondent.

Shri R.N.Gite for the Applicant.

Shri A.S.Gadkari, A.P.P.for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 15th June, 2005.

P.C.:

1. Offence has been registered against the Applicant under sections 307, 397, 398, 506 of the Indian Penal Code and section 3/25 (1B)(A) of the Arms Act and section 135 of the Bombay Police Act under C.R.No.I-229 of 2004 at Nashik Road Police Station.

2. The Complainant is one Pramilaben. Her case is that three persons came to her house on 25th June 2004 at about 3.30 p.m. One of the three persons by using his right hand shut her mouth and fired by using a revolver in his hand. The second person was carrying a sword. The person who fired with revolver enquired with the Complainant regarding whereabouts of the key of the cupboard and the gold in the house. After hearing the firing, persons residing in the building came to the premises of the Complainant and one of the three persons was caught and two others ran away. The person who was

caught was having a sword in his hand.

3. The learned Counsel for the Applicant submitted that in the absence of any allegation regarding the existence of mens-rea, offence under section 397 of the Code is not attracted. He submitted that on a plain reading of the complaint, there is no attempt made so that section 397 IPC is attracted. He submitted that the charge sheet has been filed and considering the young age of the Applicant, he should be enlarged on bail.

4. The learned A.P.P. has pointed out that the revolver allegedly used by the Applicant was found on the spot. He pointed out that there was direct evidence available against the Applicant. He lastly pointed out that the trial has been assigned to a fast track Court and on 27th June 2005 the case is kept for recording of evidence. He also pointed out that there is criminal record against the Applicant. There are three offences registered against the Applicant at Nashik Road Police Station and one case has been registered against the Applicant at Ambad Police Station.

5. I have considered the submissions of the learned Counsel for the Applicant and the learned A.P.P. There is some material indicating complicity of the Applicant. The Applicant has allegedly used a revolver which was found on the spot. There are some offences registered

against the Applicant at Nashik Road Police Station and nearby Ambad Police Station. Therefore, the learned 4th Adhoc Asstt. Sessions Judge has accepted the case of the prosecution that the Applicant may try to give threats to the prosecution witnesses. Moreover, now the trial will commence on 27th June 2005 which has been entrusted to a Fast Track Court.

6. Considering all these aspects no case is made out for grant of bail to the Applicant. The Application is rejected.

Judge.